IN THE COURT OF DISTRICT MUNSIF
BODINAYAKANUR.

Present : Thiru.A.Mohamed Hashim, B.A.,B.L.,
District Munsif, Bodinayakanur.

Monday, the 30th day of March 2026.

O.S.No.117/2023 and O.S.No.154/2023
CNR No.TNTH12-000137-2023 and CNR No.TNTH12-000154-2023

OS.No.117/2023

Vinothamani **.... Plaintiff**

- Vs -

1. Ashok Kumar
2. The President,
   Dombucherry Village Panchayat.
3. The Block Development Officer,
   Bodinayakanur.
4. The Village Administrative Officer,
   Dombuchery.
5. The Tahsildar,
   Bodinayakanur.
6. The District Collector,
   Theni. **....Defendants**

<u>OS.No.154/2023</u>

Ashok Kumar **.... Plaintiff**

- Vs -

1. Vinothamani
2. The Tahsildar,
   Bodinayakanur
3. The Revenue Divisional Officer,
   Uthamapalayam
4. The District Collector,
   Theni. **….Defendants**

The suit O.S. No: 117/2023 is taken on file on 10.02.2023 and O.S.No: 154/2023 was taken on file on 03.08.2023 and both suits were coming on 17.02.2026 before me for final hearing, in the presence of Mr.S.Selvan, learned Advocate for the plaintiff in O.S.No: 117/2023 and for 1st defendant in O.S.No: 154/2023 and in the presence of Mr.P.Rajmohan, Learned Advocate for the 1st defendant in O.S.No: 117/2023 and for plaintiff in O.S.No: 154/2023 and in the presence of Mr. K.S.N.Shivamani, Learned Government Pleader for defendants 2 to 6 in O.S.No: 117/2023 and defendants 2 to 4 in O.S.No: 154/2023. Upon hearing arguments on either side, perusing the case records and having stood over for consideration till this day, this court hereby delivered the following.

COMMON JUDGMENT

1. Suit properties in O.S.No:117/2023:-

The 1st item of the suit property, measuring 83 square metres, together with the house constructed thereon, comprised in New Survey No.367/58 (Old Survey No.226/2P) of Dombucherry Village, lies within the territorial jurisdiction of this Court. The 2nd item of the suit property is a Government public pathway comprised in Survey No.367/35, situated on the northern side of the 1st item of the suit property.

2. Suit properties in O.S.No:154/2023:-

The 1st item of the suit property is comprised in Survey Nos.367/35 and 367/36 and is shown as ABCDEFGKJHIA in the rough sketch appended to the plaint, which forms part and parcel of the plaint. The 2nd item of the suit property is comprised in Survey No.367/35, having an extent measuring East–West 5.5 metres, North–South 2.2 metres on the eastern side and 3.7 metres on the western side. The 3rd item of the suit property is comprised in Survey No.367/35 and is alleged to have been encroached upon by the defendant.

3. **Prayer in O.S.No:117/2023:-**

a) To declare that the 2nd item of the suit property is a Government public pathway and consequently to grant a permanent injunction restraining the 1st defendant from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the said pathway.

b) To grant a mandatory injunction directing the 1st defendant to remove the encroachment made in the 2nd item of the suit property and to pay the costs of the suit.

4. **Prayer in O.S.No: 154/2023:-**

a) To declare that the plaintiff is the owner of the 2nd item of the suit property, which forms part of the 1st item of the suit property, and consequently to grant a permanent injunction restraining the 1st defendant from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

b) To grant a mandatory injunction directing the 1st defendant to remove the encroachment made in the 3rd item of the suit property and to pay the costs of the suit.

5. The case of the plaintiff in O.S.No:117/2023 in brief:-

i) The 1st item of the suit property originally belonged to the plaintiff's mother, Kathariammal @ Thangammal, as ancestral property. Thereafter, she was granted Manaivari Patta No.139 by the Tahsildar, Bodinayakanur. The said Kathariammal @ Thangammal died on 13.06.2013, leaving behind her legal heirs, namely Vivekananthan, late Kalavathi, Vijaya, Vinothamani (plaintiff) and Manoharan. In the oral partition effected among the legal heirs, the 1st item of the suit property was allotted to the share of the plaintiff. The plaintiff was employed at Tiruppur and returned to his native place in May 2022 with an intention to construct a house in the 1st item of the suit property. He applied for survey, and on 13.06.2022, when the surveyor inspected the property, the plaintiff came to know that the 1st defendant had encroached upon the Government pathway comprised in Survey No.367/35, which is the 2nd item of the suit property.

ii) A rough sketch has been appended to the plaint, wherein the plaintiff’s property is shown as “P1”, the cattle shed situated behind the house of the plaintiff is shown as “P2”, the property of the 1st defendant is shown as “D”, and the Government pathway is shown as “X”. The said pathway is the only access to the cattle shed situated at the rear side of the 1st item of the suit property. The 1st defendant refused to remove the encroachment made by him in the pathway and, with an intention to prevent the plaintiff from putting up construction, issued a legal notice dated 25.08.2022 with false allegations as if the plaintiff had encroached upon the property. The 1st defendant is interfering with the plaintiff’s peaceful possession and enjoyment of the 2nd item of the suit property. The 1st defendant again issued a notice dated 13.05.2023 containing false averments and also gave a complaint before the Palanichettipatti Police Station, upon which the police advised both parties to conduct a resurvey. The plaintiff, in turn, issued a legal notice dated 31.05.2023 calling upon the 1st defendant to remove the encroachment made in the 2nd item of the suit property. As the 1st defendant failed to comply with the same, the present suit has been filed seeking a declaration that the 2nd item of the suit property is a Government pathway and for a mandatory injunction directing removal of the encroachment made therein.

6. The case of the 1st defendant in O.S.No:117/2023 in brief:-

i) All the averments contained in the plaint are false and are denied. The description of the 1st and 2nd items of the suit property is vague and incomplete. The plaintiff has not furnished the measurements, including length and breadth, of either the 1st item or the 2nd item of the suit property, and on that ground alone, the suit is liable to be dismissed. Further, the plaintiff has not specified the dimensions of the alleged compound wall sought to be demolished by way of mandatory injunction.The plaintiff has not produced any valid title documents, except patta, and even in the patta, no measurements are mentioned. Hence, the suit is liable to be dismissed.The construction put up by the predecessor of the 1st defendant in the 2nd item of the suit property was made prior to the year 2000. Therefore, the present suit is barred by limitation. The allegation that the plaintiff caused a survey on 13.06.2022 is false. The construction in the 2nd item was made in the year 2000 to the knowledge of the plaintiff and her predecessor, and no objection was raised at that time.Neither the plaintiff nor defendants 2 to 6 have any right, title, or interest over the 2nd item of the suit property. The 1st defendant has already filed a suit in O.S.No.154 of 2023 against the plaintiff and

Government officials seeking declaration in respect of the 2nd item of the suit property.

ii) Originally, the property comprised in Survey No.337/36, including the present 2nd item of the suit property, belonged to Kaetchammal, wife of Perumal Goundar. She had two sons, namely Kathariyagoundar and Suruliyandigoundar. The said Kathariyagoundar and his wife Verrumariyammal had two sons, namely Nanthagopal and Gunalan. Kaetchammal executed a gift settlement deed dated 01.04.1961 (Document No.1970 of 1961) in favour of the minors Nanthagopal and Gunalan, represented by their guardian Verrumariyammal, conveying half share in the property. She also executed a gift settlement deed in favour of Ramaraj, son of Suruliyandigoundar, in respect of the remaining half share. Thereafter, the said Ramaraj executed a sale deed dated 11.07.1966 in favour of Nanthagopal and Gunalan, thereby making them the absolute owners of the entire property. The northern portion of the property was used as a residential house, while the southern portion, which corresponds to the present 2nd item of the suit property, was used as a corn storage pit (சோளக்குழி). The said pit was closed in the year 2000, and the predecessor of the 1st defendant constructed a compound wall therein. The 1st defendant purchased the share of Gunalan under a registered sale deed dated 16.05.2015, and the remaining share was settled in his favour by his father, Nanthagopal, by way of a gift deed. The classification of the 2nd item of the suit property as a pathway in Survey No.367/35 is erroneous and arose during the Natham survey. The 1st defendant has submitted a representation before the Revenue Divisional Officer, Uthamapalayam, seeking correction of the said classification, and the same is pending. The Advocate Commissioner appointed in this case has clearly noted the encroachment made by the plaintiff in the suit property. Hence, the suit is liable to be dismissed.

7. The case of the 2 to 6 defendants in O.S.No:117/2023 in brief:-

The Survey No.367/35 has been classified as a street in the revenue records. The surveyor, upon measurement of the property comprised in the said survey number, has submitted a report confirming its classification as a pathway. It is further reported that the plaintiff has encroached upon an extent of 0.00.02 hectares in the said street, and the 1st defendant has encroached upon an extent of 0.00.03 hectares by putting up a compound wall. The plaintiff has also constructed a staircase encroaching upon the said street, and the 1st defendant has likewise constructed a compound wall and staircase by encroaching upon the same. The property comprised in Survey No.367/35 is a Government street, and neither the plaintiff nor the 1st defendant has any manner of right over the same. The defendants 2 to 6, being the competent authorities, are empowered to remove the encroachments made by both the plaintiff and the 1st defendant in the Government pathway. Hence, the suit is liable to be dismissed.

8. **<u>The case of the plaintiff in O.S.No:154/2023:-</u>**

i) A rough sketch has been appended to the plaint and the same shall be read as forming part and parcel of the plaint. In the said sketch, the portion marked as ABCDEFGKJHI represents the 1st item of the suit property. The said property originally belonged to Kaetchammal, wife of Perumal Goundar. She had two sons, namely Kathiriyagoundar and Suruliyandigoundar. The said Kathiriyagoundar and his wife Verumariyammal had two sons, namely Nanthagopal and Gunalan @ Perumal. The said Kaetchammal owned the suit property as well as other properties. She executed a gift settlement deed dated 01.04.1961 (Document No.1170 of 1961) in favour of her grandsons, namely Nanthagopal and Gunalan @ Perumal, represented by their guardian Verumariyammal, whereby half share in the 1st item of the suit property was conveyed to them. The remaining half share was settled in favour of Ramaraju, son of Suruliyandigoundar. Thereafter, the said Ramaraju executed a sale deed in favour of Nanthagopal and Gunalan in the year 1966, thereby making them absolute owners of the entire property.

ii) The northern portion of the 1st item of the suit property has been in use as a residential house, while the southern portion has been used as a corn storage pit (சோளக்குழி). The predecessor of the plaintiff constructed a compound wall in the said southern portion in the year 2000, which is depicted as “GK” in the rough sketch. During the Natham settlement scheme, the said southern portion of the 1st item of the suit property was erroneously classified as a street in the revenue records.Subsequently, the plaintiff, his father Nanthagopal, and Gunalan entered into a partition deed dated 22.01.2008, under which the eastern portion was allotted to Gunalan. The plaintiff purchased the said portion from Gunalan under a sale deed dated 16.05.2012, and the remaining share was settled in his favour by his father Nanthagopal by way of a gift deed.

iii) The 2nd item of the suit property, which forms part of the 1st item, has been encroached upon by the 1st defendant. The property of the 1st defendant is situated on the southern side of the suit property. As a result of such encroachment, the north–south measurement of the 2nd item has been reduced to about 1.4 metres as against the original extent of 2.2 metres.The predecessor of the plaintiff had already constructed a compound wall in the 2nd item of the suit property in the year 2000. The plaintiff came to know about the erroneous classification of the 2nd item as a street in the revenue records only in September 2022. In this regard, the plaintiff’s father, Nanthagopal, submitted a representation dated 12.09.2022 before the 3rd defendant.The 2nd item of the suit property has been in the exclusive possession and enjoyment of the plaintiff and his predecessors. The plaintiff’s father issued a legal notice dated 25.08.2022 to the 1st defendant, and despite receipt of the same, no reply was sent. The 1st defendant commenced construction of a house in the property situated to the south of the 2nd item in November 2022. During such construction, the 1st defendant encroached upon the 2nd item of the suit property and damaged the compound wall marked as “GK” in the rough sketch on 18.05.2023. A complaint was lodged before the Palanichettipatti Police Station in this regard. A further legal notice dated 18.05.2023 was issued to the 1st defendant, to which a reply dated 31.05.2023 was sent containing false averments. The 1st defendant has encroached upon the 2nd item of the suit property to an extent of 0.5 metres on the western side. The 1st defendant has also filed O.S.No.117 of 2023 with false averments. Hence, the present suit.

9. <u>The case of the 1st defendant in O.S.No:154/2023 brief :-</u>

All the averments stated in the plaint are false and are denied. The plaintiff has no manner of right, title, or interest over the suit property. In the partition deed dated 22.01.2008 executed between the plaintiff's father, Nanthagopal, and his brother Gunalan, the 'A' Schedule property allotted to Nanthagopal is described as measuring East–West 43½ feet, with North–South extent of 27 feet on the western side and 22 feet on the eastern side, having a total extent of 1076¾ square feet. The southern boundary of the said property is described as an East–West pathway. In the 'B' Schedule property allotted to Gunalan, the measurements are given as East–West 45 feet on the northern side and 41 feet on the southern side, with North–South extent of 22 feet on both the western and eastern sides, and a total extent of 946 square feet. The southern boundary is described as Thangammal Vagaiyara Manai. The plaintiff's father executed a gift settlement deed dated 23.01.2009 in favour of the plaintiff, and Gunalan executed a sale deed dated 16.05.2012 in favour of the plaintiff. In both the said documents, the 2nd and 3rd items of the suit property do not find place. Hence, the plaintiff cannot claim any right over the 2nd and 3rd items of the suit property. The plaintiff has suppressed material facts and has filed the present suit with ulterior motives. The learned Advocate Commissioner, in his report, has clearly stated that the plaintiff is not entitled to the suit property. The plaintiff cannot claim any right by encroaching upon the property and putting up construction, including a compound wall, in property that does not belong to him. Hence, the suit is liable to be dismissed.

10. **The case of the defendants 2 to 4 in O.S.No:154/2023:-**

The Survey No.367/35 has been classified as a street in the revenue records. The surveyor, upon measurement of the property comprised in the said survey number, has submitted a report confirming that it is a pathway. It is further stated that the 1st defendant has encroached upon an extent of 0.00.02 hectares in the said street, and the plaintiff has encroached upon an extent of 0.00.03 hectares by putting up a compound wall. The 1st defendant has also constructed a staircase encroaching upon the said street, and the plaintiff has likewise constructed a compound wall and staircase by encroaching upon the same. The property comprised in Survey No.367/35 is a Government street, and neither the plaintiff nor the 1st defendant has any manner of right over the same. The defendants 2 to 4 being the competent authorities, are empowered to remove the encroachments made by both the plaintiff and the 1st defendant in the Government pathway. Hence, the suit is liable to be dismissed.

11. Issues framed in O.S.No:117/2023:-

This Court framed the following issues after perusing the pleading on 09.06.2025:-

i) Whether the 2nd item of the suit property is a public pathway ?

ii)Whether the description of 2nd item of suit property is sufficient to identify it?

iii) Whether the plaintiff is entitled to the relief of declaration as prayed for?

iv) Whether the 1st defendant has encroached the 2nd item of the suit property

v) Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for?

vi)Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

vii)To what other relief the parties are entitled to?

12. <u>Issues framed in O.S.No: 154/2023</u>

Upon perusing the pleadings, this Court framed the following issues on 09.06.2025:-

i) Whether the plaintiff is having title over the entire suit properties?

ii) Whether the 1st defendant has encroached the 3rd item of suit property ?

iii) Whether the plaintiff is entitled to the relief of declaration and mandatory injunction as prayed For?

iv) Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for?

v) To what other reliefs the parties are entitled to ?

13. By order dated 30.06.2025, this Court directed that the suits in O.S.No.117 of 2023 and O.S.No.154 of 2023 be tried jointly, as the dispute in both the suits pertains to the very same suit property. Since O.S.No.117 of 2023 was instituted earlier, it was taken as the lead case, and the evidence was recorded therein.

14. In order to prove the case of the plaintiff, the plaintiff was examined as PW1 and Exs.A1 to A12 were marked through her. Exs.C1 to C4 were also marked through her.

15. In order to prove the case of the 1st defendant, the 1st defendant was examined as DW1 and Exs.B1 to B18 were marked through him. During the cross-examination of DW1, Ex.A13 was marked. No oral or documentary evidence was adduced on the side of defendants 2 to 6.

16. Discussion and reasoning in O.S.No: 117/2023:-

i) As all the issues arising in O.S.No.117 of 2023 are interconnected, they are taken up together for consideration.

ii) In this part, the parties are referred to as per their rank in O.S.No.117/2023, wherein the plaintiff in the said suit is referred to as the plaintiff and the defendants therein are referred to as the defendants, for the sake of convenience and clarity.

iii) The learned counsel for the plaintiff reiterated the averments set out in the plaint and submitted that Survey No.367/35 has been classified as a street in the revenue records. He would further submit that the 1st defendant, in his sale deed and gift settlement deed, has specifically admitted the same. Therefore, according to him, the 2nd item of the suit property is a pathway. He would also contend that the learned Advocate Commissioner, in his report, has categorically stated that the 1st defendant has encroached upon the property. It is further submitted that the relief of mandatory injunction is well within limitation, as the suit has been filed within three years from the date of knowledge of the alleged encroachment. He would add that the 1st defendant has not produced any material to show that the alleged encroachment was made with the knowledge of the plaintiff at an earlier point of time.

iv) Per contra, the learned counsel for the defendants reiterated the averments set out in the written statement and submitted that the present suit is hopelessly barred by limitation, as the plaintiff has not filed the suit within the prescribed period. He placed reliance on the decision of the Hon'ble Supreme Court in ***Nazir Mohammed v. J. Kamala [AIR 2020 SC 4321]*** to contend that, in a suit seeking mandatory injunction, the plaintiff must specifically plead and prove the date of encroachment. According to him, the plaintiff has failed to mention the date of the alleged encroachment. He would further submit that title documents prevail over revenue records, and the plaintiff cannot take advantage of any error in the revenue entries. He also contended that, even prior to the Natham Settlement Scheme, the 2nd item of the suit property belonged to the predecessor-in-title of the 1st defendant, and its classification as a street in the revenue records is erroneous, which cannot confer any right upon the plaintiff.

v) The learned Government Pleader appearing for defendants 2 to 6 submitted that the 2nd item of the suit property has been classified as a public street in the revenue records and that the said defendants are empowered to remove the encroachments made by both parties.

vi) This Court has considered the rival submissions and perused the materials available on record.

vii) On perusal of the records, it is seen that the 1st item of the suit property was assigned to the plaintiff’s mother Kathiriyammal @ Thangammal and patta (Ex.A2) dated 25.04.1996 was issued in her favour in respect of the 1st item of the suit property. The house tax receipt (Ex.A4) stands in the name of Kathiriyammal, the water tax receipt (Ex.A5) and the electricity bill (Ex.A6) stand in the name of Thangammal. Thangammal died on 13.06.2013 as evidenced by the death certificate (Ex.A7). The Tahsildar has issued a certificate (Ex.A8) stating that the 1st item of the suit property was surveyed by the surveyor on 13.06.2021. The 1st defendant issued a legal notice to the plaintiff on 25.08.2022 and thereafter another legal notice (Ex.A10) dated 13.05.2023, for which the plaintiff issued a reply notice (Ex.A11) dated 31.05.2023.

viii) The 1st defendant has also filed two rough sketches (Ex.B1) and (Ex.B2). On perusal of the said rough sketches, no measurements have been mentioned therein. In the gift settlement deed (Ex.B3), Kaetchammal executed the settlement deed in favour of the minors Nanthagopal and Gunalan @ Perumal, represented by their mother and guardian Verrumarriyammal. In the said document, the property has been described in two blocks. The extent of the 1st block situated on the northern side is mentioned as east-west 27½ Kajam and south-north 9 Kajam, whereas the 2nd block situated on the southern side is mentioned as east-west 6 Kajam and south-north 4 Kajam. The undivided half share in the above said property alone has been gifted under the said document. Both the learned counsel appearing for the plaintiff and the 1st defendant would submit that though 1 Kajam is generally understood as 3 x 3 feet, namely 9 square feet, the Kajam referred to in the settlement deed (Ex.B3) has been used as equivalent to 3 feet. A sale deed (Ex.B4) dated in the year 1966 has been entered into between Ramaraj Goundar and Saraswathi @ Veeruchinnammal, whereunder it is recited that the remaining half share, apart from the half share conveyed under the settlement deed (Ex.B3), ancestrally belonged to Ramaraj Goundar and that he had earlier executed a settlement deed in favour of Saraswathi @ Veeruchinnammal and subsequently Saraswathi @ Veeruchinnammal had reconveyed the same to Ramaraj Goundar for valuable consideration. The 1st defendant would claim that the half share conveyed under the sale deed (Ex.B4) was purchased by his predecessor-in-title. However, the 1st defendant has failed to state the lineage or trace the chain of title either in the written statement filed in the present suit or in the plaint filed in O.S.No.154/2023.

ix) The 1st defendant's father Nanthagopal and his brotherGunalan @ Perumal have entered into a registered partition deed (Ex.B5) on 22.01.2008, whereunder the 'A' Schedule property was allotted to the share of Nanthagopal and the 'B' Schedule property was allotted to the share of Gunalan @ Perumal. The property described in the 'A' Schedule is as follows:-

> **" நம்மில் 1வது நபரான K.நந்தகோபால் தன் பாகமாக அடைந்து கொள்ளும் "A" செடியூல் சொத்து விவரம்:–**

தேனி மாவட்டம், போடிநாயக்கனூர் தாலுகா, பெரியகுளம் பதிவு மாவட்டம், போடிநாயக்கனூர் சார்பதிவகம், டொம்புச்சேரி கிராமம், 3 வார்டு, விநாயகர் கோவில் தெருவில், நத்தம் சர்வே நம்பர் 226/2 ல் உள்ள மனையிடத்தில் மேற்குப் பக்கமுள்ள மனையிடத்திற்கு நாள்கு மால்:

(கிழக்கு) – இதன் "B" செடியூல் K.குணாளள் பாக மனையிடம்.

(தெற்கு) – கிழமேல் பாதை.

(மேற்கு) – தென்வடல் சந்து.

(வடக்கு) – கண்ணன் செட்டியார் வகையரா மனை.

இம்மாலில் கிழமேல் அடி 43–1/2 , தென்வடல் மேல்புரம் அடி 27, கீழ்புரம் அடி 22 க்கு சதுரடி 1076–2/4 உள்ள மனையிடமும், தெற்குப் பார்த்த வழி நடை பாதை பாத்தியமும் சேர்ந்து. மேற்படி சொத்தின் மதிப்பு ரூபாய்.37,900/–. மேற்படி இடத்தில் கட்டிடம் ஏதும் இல்லை. மேற்படி சொத்து ரீ சர்வேப் படி பட்டா நம்பர் 1359 க்கு, நத்தம் ரீ சர்வே நம்பர் 367/36 ல் மேல்புரம் உள்ளது.

ஆக "A" செடியூல் சொத்தின் மதிப்பு ரூபாய்.37,900/–"

x) The property described in ‘B’ Schedule is as follows:-

"(நம்மில் 2 வது நபரான K.குணாளன் தன் பாகமாக அடைந்து கொள்ளும் "B" செடியூல் சொத்து விவரம்)

தேனி மாவட்டம், போடிநாயக்கனூர் தாலுகா, பெரியகுளம் பதிவு மாவட்டம், போடிநாயக்கனூர் சார்பதிவகம், டொம்புச்சேரி கிராமம், 3 வது வார்டு, விநாயகர் கோவில் தெருவில், நத்தம் சர்வே நம்பர் 226/2 ல் உள்ள மனையிடத்தில் கிழக்குப் பக்கமுள்ள மனையிடத்திற்கு நான்கு மால்:-

(கிழக்கு) – பாலு செட்டியார் வகையரா மளையிடம்

(தெற்கு) – தங்கம்மாள் வகையரா மனை.

(மேற்கு) – இதன் "A" செடியூல் K நந்தகோபால் பாக மனையிடம்

(வடக்கு) – கண்ணன் செட்டியார் வகையரா மனை.

இம்மாலில் கிழமேல் வடபுரம் அடி 45, தென்புரம் அடி 41, தென்வடல் மேல்புரம் அடி 22, கீழ்புரம் அடி 22 க்கு சதுரடி 946 உள்ள மனையிடமும் சேர்ந்து. மேற்படி சொத்தின் மதிப்பு ரூபாய்.30,275/–. மேற்படி இடத்தில் கட்டிடம் ஏதும் இல்லை. மேற்படி சொத்து ரீ சர்வேப்படி பட்டா நம்பர் 1359 க்கு, நத்தம் ரீ சர்வே நம்பர் 367/36 ல் கீழ்புரம் உள்ளது.

ஆக "B" செடியூல் சொத்தின் மதிப்பு ரூபாய்.30,275/–"

xi) According to the 1st defendant, the total east-west measurement of both the blocks mentioned in the settlement deed (Ex.B3) is 100½ feet and the total south-north measurement is 39 feet. The northern block measures east-west 82½ feet and south-north 27 feet, whereas the southern block measures east-west 18 feet and south-north 12 feet.However, on a careful perusal of the partition deed (Ex.B5), it is seen that the western portion was allotted to the share of Nanthagopal as ‘A’ Schedule property and the eastern portion was allotted to the share of Gunalan @ Perumal as ‘B’ Schedule property. The ‘A’ Schedule property measures east-west 43½ feet and south-north 27 feet on the western side and 22 feet on the eastern side. The ‘B’ Schedule property measures east-west 45 feet on the northern side and 41 feet on the southern side and south-north 22 feet. Therefore, the total east-west measurement available under the partition deed (Ex.B5) comes only to 88½ feet on the northern side and 84½ feet on the southern side. Likewise, the south-north measurement found in the partition deed varies only between 22 feet and 27 feet as against 39 feet now claimed by the 1st defendant.

xii) Thus, though the 1st defendant would claim that the property originally measured 100½ feet east-west and 39 feet south-north, admittedly only 88½ feet east-west and 22 to 27 feet south-north has been partitioned between Nanthagopal and Gunalan @ Perumal under the partition deed (Ex.B5). During the cross-examination, the 1st defendant (DW1) has also admitted the same and would state that the partition deed (Ex.B5) was drafted in consonance with the revenue records. Even assuming that the partition deed was drafted based upon the revenue records, the father of the 1st defendant namely Nanthagopal and his paternal uncle Gunalan @ Perumal were fully aware that the revenue records reflected only 88½ feet east-west and 22 to 27 feet south-north and not 100½ feet east-west and 39 feet south-north as now claimed by the 1st defendant. Despite the same, they had not taken any steps whatsoever either to rectify the revenue records or to correct the alleged discrepancy in measurements.

xiii) Subsequently, the father of the 1st defendant namely Nanthagopal has executed a registered settlement deed (Ex.B6) in favour of the 1st defendant on 23.01.2008, whereunder he has conveyed the 'A' Schedule property allotted to him under the partition deed (Ex.B5). A perusal of the property description found in the settlement deed (Ex.B6) shows that the measurements and boundaries are identical to the measurements found in the partition deed (Ex.B5). Likewise, under the sale deed (Ex.B7), the paternal uncle of the 1st defendant namely

Gunalan @ Perumal has conveyed the ‘B’ Schedule property allotted to him under the partition deed (Ex.B5) in favour of the 1st defendant. Even in the said sale deed, the measurements mentioned are the very same measurements found in the partition deed (Ex.B5).

xiv) Therefore, from the partition deed (Ex.B5) entered into between the predecessors-in-title of the 1st defendant, the settlement deed (Ex.B6) executed in favour of the 1st defendant and the sale deed (Ex.B7) executed in his favour, it is abundantly clear that the total east-west extent conveyed under the said documents is only 88½ feet and not 100½ feet. Likewise, the south-north measurement conveyed under the said documents varies only between 22 feet and 27 feet and not 39 feet as now claimed by the 1st defendant. However, in the plaint filed by the 1st defendant in O.S.No.154/2023, he has claimed right over 100½ feet east-west and 39 feet south-north by placing reliance upon the earlier settlement deed (Ex.B3).

xv) The learned counsel appearing for the 1st defendant would contend that the revenue records and FMB sketch cannot override the registered instruments namely the settlement deed (Ex.B3) and the sale deed (Ex.B4) and that the discrepancy in measurements had occurred only during the natham survey. It is the further contention of the 1st defendant that his father Nanthagopal had submitted a representation dated 12.09.2022 before the Revenue Divisional Officer seeking rectification of the FMB sketch and revenue records in consonance with the settlement deed (Ex.B3). This Court is unable to accept the said contention. Though it is true that revenue records by themselves do not confer title and registered title deeds ordinarily prevail over revenue entries, the present case cannot be decided solely on the basis of the revenue records. The subsequent conduct of the 1st defendant and his predecessors-in-title assumes considerable significance.

xvi) Admittedly, the predecessors of the 1st defendant namely Nanthagopal and Gunalan @ Perumal were parties to the partition deed (Ex.B5). Under the said partition deed, they have consciously partitioned only an extent measuring 88½ feet east-west with south-north measurements varying between 22 feet and 27 feet. Thereafter, the very same measurements have been reiterated in the settlement deed (Ex.B6) executed by Nanthagopal in favour of the 1st defendant and in the sale deed (Ex.B7) executed by Gunalan @ Perumal in favour of the 1st defendant. At no point of time did they either reserve any excess extent or describe the property as measuring 100½ feet east-west and 39 feet south-north.

It is reasonable to expect from a prudent man that if the revenue records reflected incorrect measurements contrary to the parent title deeds, he would immediately take effective steps to rectify the same before the competent authorities. Further, he would never voluntarily accept the alleged erroneous measurements in subsequent registered instruments executed by him. However, in the present case, the predecessors of the 1st defendant, despite being fully aware of the measurements reflected in the revenue records, have repeatedly accepted and acted upon the same in the subsequent registered transactions.

xvii) Therefore, if the case of the 1st defendant rested solely upon the settlement deed (Ex.B3), this Court might have been inclined to place reliance upon the parent title deed. However, the subsequent partition deed (Ex.B5), settlement deed (Ex.B6) and sale deed (Ex.B7) clearly show that the predecessors of the 1st defendant themselves had accepted only the reduced extent reflected in the revenue records. In such circumstances, the 1st defendant cannot now disregard the subsequent registered transactions and claim a larger extent solely based upon the earlier settlement deed (Ex.B3). Hence, this Court is of the considered view that the 1st defendant cannot claim any right, title or interest beyond the extent conveyed under the settlement deed (Ex.B6) and the sale deed (Ex.B7).

xviii) This Court has appointed an Advocate Commissioner and the learned Advocate Commissioner has filed his report before this Court on 23.07.2024. Though the plaintiff has filed his written objections to the said report, the 1st defendant has not chosen to file any objection. On the contrary, the learned counsel appearing for the 1st defendant has made an endorsement on 27.03.2024 stating that he has no objection to the report of the learned Advocate Commissioner.

xix) On a careful perusal of the report (Ex.C1), it is seen that the learned Advocate Commissioner has inspected the suit properties and filed the sketch based upon the settlement deed (Ex.B3) as well as the revenue records. This Court has already held that the 1st defendant cannot claim any right beyond the extent conveyed under the settlement deed (Ex.B6) and the sale deed (Ex.B7). Therefore, the measurements shown in the sketch insofar as they are based upon the larger extent claimed under the settlement deed (Ex.B3) cannot be relied upon.

xx) However, on a careful perusal of the sketch (Ex.C2), it is seen that the learned Advocate Commissioner, with the assistance of the surveyor, has specifically identified the encroachments made by both parties. The report discloses that the 1st defendant has encroached an extent of 13 square meters, depicted as IJKQRSO in the sketch. Likewise, the plaintiff has also encroached an extent of 3 square meters, depicted as KLMN. The surveyor's report would further disclose that the 1st defendant has put up construction on the western side to an extent of 18¼ feet over and above his entitlement as per the revenue records.

xxi) Since the learned Advocate Commissioner has clearly identified the encroachments with the assistance of the surveyor and since the 1st defendant has not chosen to file any objection to the said report and sketch, this Court is of the considered view that the Advocate Commissioner's report and sketch are liable to be accepted.

xxii) Coming to the question of limitation raised by the 1st defendant, it is the contention of the 1st defendant that the plaintiff has not specifically mentioned the exact date on which she came to know about the alleged encroachment. Though no specific issue has been framed with regard to limitation, this Court is duty bound to consider the same in view of the mandate under the Limitation Act.

xxiii) On a careful perusal of the plaint averments, this Court finds that the plaintiff has categorically stated that she came to know about the encroachment only at the time of survey and immediately thereafter she had taken legal steps. The certificate (Ex.A8) issued by the Tahsildar, Bodinayakanur would reveal that the property was surveyed on 13.06.2022. Therefore, the cause of action for filing the suit would arise only from the date on which the plaintiff gained knowledge about the encroachment and not from the date on which the alleged encroachment had actually taken place.

xxiv) In this regard, the stand taken by the 1st defendant is also not consistent. In the written statement, the 1st defendant would contend that the common wall had been constructed by encroaching upon the suit property as early as in the year 2000. However, in the representation (Ex.B8) alleged to have been submitted by the father of the 1st defendant namely Nanthagopal before the Revenue Divisional Officer, Uthamapalayam, it has been stated that the common wall had been constructed only in the year 2007. Thus, even according to the defence, there is inconsistency regarding the actual period of construction. Further, during the cross-examination of the plaintiff (PW1), a specific suggestion was put to her regarding the date of construction of the compound wall and her knowledge about the same. The relevant portion from the cross-examination of plaintiff (PW1) is extracted as follows:-

> ‘‘நான் வழக்கறிஞரிடம் 2ம் லக்க சொத்தில் எந்த வருட காம்பவுண்ட் சுவர் கட்டப்பட்டது என்று சொன்னேனா என்றால் சொல்லவில்லை. என்னுடைய வழக்குரையிலும், நிரூபண வாக்குமூலத்திலும் 2ம் லக்க சொத்தில் எந்த வருட காம்பவுண்ட் சுவர் கட்டப்பட்டது என்று சொல்லியுள்ளேனா என்றால் சொல்லவில்லை. ஆனால் 4 வருடங்களுக்கு முன்பு தான் காம்பவுண்ட் சுவர் கட்டினார்கள். நான் சர்வேயர் வைத்து அளந்து பார்த்த போது தான் தாவா 2ம் லக்க சொத்து வீதி என்பது எனக்கு தெரிய வந்தது. நான் சர்வேயர் வைத்து அளந்ததற்கு சர்வேயரிடம் கொடுத்த மனுவோ, கட்டண ரசீதோ, சர்வேயர் எனக்கு கொடுத்த அறிவிப்பையோ, இந்த வழக்கில் நான் தாக்கல் செய்துள்ளேனா என்றால் அதுபற்றி எனக்கு தெரியாது. நான்

சொல்லும் காம்பவுண்ட் சுவர் 1ம் பிரதிவாதியின் பெற்றோரால் 2000ம் ஆண்டிற்கு முன்பே கட்டப்பட்டது என்றால் சரியல்ல."

xxv) The relevant portion extracted supra would show that the plaintiff has consistently maintained that she came to know about the encroachment only when the property was measured through a surveyor and that the compound wall had not been constructed prior to the year 2000 as suggested by the 1st defendant. Mere non-mentioning of the exact date of knowledge in the plaint cannot by itself be fatal when the plaintiff has otherwise clearly stated that she came to know about the encroachment only during the course of survey conducted on 13.06.2022. Therefore, this Court is of the considered view that the suit has been filed well within the period of limitation.

xxvi) In view of the foregoing discussions, this Court has already held that the predecessors-in-title of the 1st defendant as well as the 1st defendant himself have repeatedly accepted the revenue records and acted upon the same in the subsequent registered documents. Admittedly, Survey No.367/35 has been classified as a public pathway in the revenue records. The 1st defendant and his predecessors, despite being fully aware of the said classification, have not taken any effective steps for rectification of the same for several years and on the contrary have accepted the measurements and classifications reflected in the revenue records while executing the partition deed (Ex.B5), settlement deed (Ex.B6) and sale deed (Ex.B7). Once the 1st defendant and his predecessors have consciously accepted the revenue classification and acted upon the same in the subsequent registered transactions, they cannot now turn around and contend that Survey No.367/35 is not a pathway and claim exclusive right over the same solely based upon the earlier settlement deed (Ex.B3). In such circumstances, the classification of Survey No.367/35 as a public pathway found in the revenue records has to be accepted. **Issue No: 1 is answered accordingly.**

xxvii) As far as the description of the suit property is concerned, the learned counsel appearing for the 1st defendant would vehemently contend that the plaintiff has merely mentioned the survey number and has not furnished the complete extent and boundaries of the suit property and therefore the plaint is not in consonance with Order VII Rule 3 of CPC.

xxviii) This Court is unable to accept the said contention. No doubt, under Order VII Rule 3 of CPC, where the subject matter of the suit is immovable property, the plaint must contain sufficient description of the property so as to enable proper identification of the same. However, the object of the provision is only to ensure that the property in dispute is capable of identification and not to insist upon technical or mathematical precision in every case.

xxix) In the present case, the plaintiff has specifically described the suit property by mentioning the relevant survey number namely Survey No.367/35. Further, the revenue records produced before this Court clearly classify Survey No.367/35 as a public pathway. The identity of the property has therefore never been in doubt. More importantly, pursuant to the orders of this Court, the learned Advocate Commissioner had inspected the suit property with the assistance of the surveyor and filed the report and sketch (Ex.C1 and Ex.C2). The learned Advocate Commissioner has clearly identified the suit properties, the alleged encroachments and the physical features available on ground. The report would further disclose that the property could be located and measured without any ambiguity.

xxx) The conduct of the 1st defendant itself would show that he had no difficulty in identifying the suit property. The 1st defendant had contested the suit on merits, filed written statement, produced documents and participated in the commission proceedings. At no point of time has the 1st defendant pleaded that he was unable to identify the property or that any prejudice had been caused to him on account of the alleged defective description. Mere absence of exact measurements or complete boundaries by itself would not render the suit not maintainable when the identity of the property is otherwise ascertainable from the survey number, revenue records and the Advocate Commissioner's report.

xxxi) In the present case, the survey number, revenue classification, commission report and sketch collectively establish that the suit property is clearly identifiable. Therefore, this Court is of the considered view that the description of the suit property is sufficient compliance of Order VII Rule 3 of CPC and the contention raised by the learned counsel for the 1st defendant is liable to be rejected. **Issue No: 2 is answered accordingly.**

xxxii) In view of the foregoing discussions, this Court has already held that the 2nd item of the suit property is a public pathway. Therefore, the plaintiff is entitled to the relief of declaration declaring the same as a public pathway. **Accordingly, Issue No.3 is answered in favour of the plaintiff.**

xxxiii) The Advocate Commissioner's report and sketch (Ex.C1 and Ex.C2) would clearly establish that the 1st defendant has encroached upon the 2nd item of the suit property. The 1st defendant has also not chosen to file any objection to the said report. Hence, this Court is of the considered view that the plaintiff has proved the encroachment made by the 1st defendant. **Accordingly, Issue No.4 is answered in favour of the plaintiff.**

xxxiv) Since the 1st defendant has encroached upon the public pathway in which the plaintiff is also having right of usage, the plaintiff is entitled to the relief of mandatory injunction directing removal of the encroachment made by the 1st defendant. **Accordingly, Issue No.5 is answered in favour of the plaintiff.**

xxxv) The evidence available on record would further show that the 1st defendant has caused obstruction to the plaintiff's usage of the pathway. Therefore, the plaintiff is entitled to the relief of permanent injunction restraining the 1st defendant from interfering with the plaintiff's peaceful usage and enjoyment of the public pathway**. Accordingly, Issue No.6 is answered in favour of the plaintiff.**

xxxvi) Considering the nature of dispute between the parties and the relationship between them, this Court is of the view that both parties shall bear their own costs. The plaintiff is not entitled to any other relief apart from the reliefs granted above. **Accordingly, Issue No.7 is answered.**

<u>17. Discussion and reasoning in O.S.No : 154/2023:-</u>

i) As all the issues framed in O.S.No: 154/2023 are inter-connected, they are taken up together for consideration.

ii) In this part, the parties are referred to as per their rank in O.S.No.154/2023, wherein the plaintiff in the said suit is referred to as the plaintiff and the defendants therein are referred to as the defendants, for the sake of convenience and clarity.

iii) This Court has already, in the preceding paragraphs while dealing with O.S.No.117/2023, held that the 2nd item of the suit property therein comprised in Survey No.367/35 is a public pathway. The plaintiff in the present suit claims exclusive right over the very same property. Though the description of the property found in the plaint and in the rough sketches (Ex.B1 and Ex.B2) is not clear and definite, the crux of the claim made by the plaintiff is that the portion marked as IJKL in the 2nd sketch annexed to the Advocate Commissioner's report exclusively belongs to him. However, this Court has already categorically held that the said portion forms part of the public pathway and that the plaintiff has no exclusive right, title or interest over the same. Once the property is held to be a public pathway, no individual can claim absolute ownership over any portion thereof in derogation of the rights of the public. Therefore, this Court is of the considered view that the plaintiff is not entitled to the relief of declaration as prayed for. **Accordingly, Issue No.1 is answered against the plaintiff.**

iv) On a careful perusal of the Advocate Commissioner's report and sketch, it is seen that the learned Advocate Commissioner has specifically identified that the 1st defendant in the present suit has encroached an extent of 3 square meters in the public pathway comprised in Survey No.367/35 and the same has been depicted as KLMN in the sketch. The said finding has been arrived at with the assistance of the surveyor and there is no material available on record to discredit the same. It is a settled proposition of law that one who seeks equity must also do equity. In the present case, the 1st defendant has filed O.S.No.117/2023 contending that Survey No.367/35 is a public pathway and sought relief of mandatory injunction directing removal of the encroachment allegedly made by the plaintiff herein. Having taken such a stand before this Court, the 1st defendant cannot herself continue to retain encroachment over a portion of the very same public pathway. Equity demands that both parties are equally bound to respect the public nature of the pathway and neither party can be permitted to appropriate any portion thereof for private use. Therefore, this Court is of the considered view that the 1st defendant is liable to remove the encroachment marked as KLMN in the Advocate Commissioner's sketch. **Accordingly, Issue No.2 is answered in favour of the plaintiff.**

v) Though this Court has held that the plaintiff is not entitled to the relief of declaration declaring himself as the absolute owner of the 3rd item of the suit property, the materials available on record clearly establish that the 1st defendant has encroached upon a portion of the public pathway. Since the plaintiff is also a person having right of access and usage over the said public pathway, he is certainly entitled to seek removal of the encroachment made therein. Therefore, this Court is of the considered view that the plaintiff is entitled to the relief of mandatory injunction directing the 1st defendant to remove the encroachment made in the public pathway. **Accordingly, Issue Nos.3 and 4 are answered partly in favour of the plaintiff.**

In the result, O.S.No.117/2023 is partly decreed. The 2nd item of the suit property is hereby declared as a public pathway. The 1st defendant is hereby restrained by way of permanent injunction from in any manner interfering with the plaintiff's peaceful usage and enjoyment of the 2nd item of the suit property. A mandatory injunction is issued directing the 1st defendant to remove the encroachment depicted as "IJKQRSO" in the Advocate Commissioner's sketch within a period of two months from the date of this judgment. The parties shall bear their respective costs.

In the result, O.S.No.154/2023 is partly decreed without costs. The reliefs of declaration and permanent injunction sought by the plaintiff are hereby dismissed. A mandatory injunction is issued directing the 1st defendant to remove the encroachment depicted as "KLMN" in the Advocate Commissioner's sketch within a period of two months from the date of this judgment.

Dictated to the steno typist, transcribed by her corrected, and pronounced by me in open Court, on the 30th day of March 2026.

MOHAMED HASHIM A Digitally signed by MOHAMED HASHIM A Date: 2026.03.30 18:09:06 +0530

District Munsif,
Bodinayakanur.

OS.No.117/2023 and OS.No.154/2023

Plaintiff's Side Witness:-

1. PW1 – Vinothamani (Plaintiff in OS No.117/2023)

Plaintiff's Side Documents:-

1.	-	Ex.A1	Rough Sketch	Original
2.	25.04.1996	Ex.A2	Patta for 1st item of suit property	Original
3.	31.05.2023	Ex.A3	FMB Sketch	Online Copy
4.	26.04.2023	Ex.A4	House tax receipt in the name of plaintiff's mother.	Original
5.	05.04.2022	Ex.A5	Water tax receipt in the name of plaintiff's mother	Original
6.	06.04.2023	Ex.A6	Electricity bill in the name of plaintiff's mother	Original
7.	13.06.2013	Ex.A7	Death Certificate of plaintiff's mother	Original
8.	13.06.2022	Ex.A8	Certificate given by Tahsildar, Bodinayakanur for conducting survey	Original
9.	25.08.2022	Ex.A9	Copy of legal notice send by 1st respondent to the plaintiff	Certified Copy
10	13.05.2023	Ex.A10	Legal notice issued by 1st defendant to plaintiff	Served Copy
11.	31.05.2023	Ex.A11	Reply notice sent by plaintiff	Office Copy
12.	01.06.2023	Ex.A12	Copy of Acknowledgment slip	Online Copy
13.		Ex.A13	Copy of Patta for the survey No.367/36	Online Copy

1.	-	Ex.C.1	Commissioner Report	Original
2.	-	Ex.C.2	Commissioner's Rough Sketch	Original

3.	-	Ex.C.3	Report filed by the Taluk Surveyor, Bodinayakanur.	Original
4.	-	Ex.C.4	Rough Sketch filed by the Taluk Surveyor, Bodinayakanur (2 Nos)	Original

Defendants' side Witness:-

1.DW1 – Ashok Kumar (1st Defendant in OS No.117/2023)

Defendant's side Documents:-

1.	-	Ex.B1	Rough Sketch filed in OS.NO.154/2023	Original
2.	-	Ex.B2	Rough Sketch filed in OS No.154/2023	Original
3.	01.04.1961	Ex.B3	Copy of gift settlement deed	Certified copy
4.	11.07.1966	Ex.B4	Copy of sale deed	Certified copy
5.	22.01.2008	Ex.B5	Copy of partition deed.	Certified copy
6.	23.01.2008	Ex.B6	Copy of gift settlement deed executed by the 1st defendant's father in favour of defendant.	Certified copy
7.	16.05.2012	Ex.B7	Copy of the sale deed executed by Gunalan in favour of the 1st defendant	Certified copy
8.	12.09.2022	Ex.B8	Copy of letter send to Revenue Divisional officer.	True Copy
9.	25.08.2022	Ex.B9	Copy of legal notice send to the 1st	Office copy

			defendant of OS NO.154/2023	
10.	13.05.2023	Ex.B10	Copy of legal notice send to the 1st defendant.	Office copy
11.	16.05.2023	Ex.B11	Acknowledgment Slip	Original
12.	31.05.2023	Ex.B12	Reply Notice of 1st defendant	Original
13.	18.05.2023	Ex.B13	Copy of Complaint given in PC Patti Police Station	Original
14.	19.05.2022	Ex.B14	House tax receipt	Original
15.	04.02.2023	Ex.B15	Electricity Receipt	Original
16.	19.05.2022	Ex.B16	Water tax receipt	Original
17.	-	Ex.B17	Guideline Value	Online Copy
18.	18.05.2023	Ex.B18	Copy of complaint given by defendant' father in PC Patti Police Station	Xerox

MOHAMED HASHIM A

Digitally signed by MOHAMED HASHIM A
Date: 2026.03.30 18:09:14 +0530

District Munsif,
Bodinayakanur.

OS No.117/2023 C/W *154/2023*
Fair / Judgment
Date: 30.03.2026.